

Assembly Bill No. 994

Passed the Assembly September 11, 2013

Chief Clerk of the Assembly

Passed the Senate September 11, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Chapter 2.85 (commencing with Section 1001.41) of Title 6 of Part 2 of the Penal Code, relating to diversion programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, Lowenthal. Postplea misdemeanor diversion programs.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication. Existing law requires the district attorney of each county annually to review any diversion program. Existing law prohibits a program from continuing without the approval of the district attorney and prohibits a person from participating in a diversion program without the authorization of the district attorney.

This bill would require each prosecuting attorney to establish a postplea misdemeanor diversion program within his or her jurisdiction and would authorize either the prosecuting attorney or the superior court to offer diversion to a first time misdemeanor defendant, as specified. The program would specify the administrative procedures and who would be eligible for the postplea misdemeanor diversion program. The bill would repeal these provisions as of January 1, 2019. By requiring diversion programs in local jurisdictions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.85 (commencing with Section 1001.41) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.85. POSTPLEA MISDEMEANOR DIVERSION

1001.41. (a) Each prosecuting attorney shall, within his or her jurisdiction, establish a misdemeanor diversion program by which a first time misdemeanor offender defendant may be offered, at the discretion of the prosecuting attorney, diversion in lieu of sentencing as provided in this chapter. The superior court of the county where the underlying offense occurred may also offer the defendant diversion in lieu of sentencing as provided in this chapter.

(b) As used in this chapter, “postplea misdemeanor diversion” means the postponing or terminating of sentencing for a misdemeanor charge against a defendant who has entered a plea of guilty or nolo contendere and who meets the criteria in Section 1001.42 upon completion of a diversion program. Postplea misdemeanor diversion may not be used in officer hearings, administrative hearings, mediation, dispute resolution programs, or restorative justice programs.

(c) This chapter shall apply to first-time misdemeanor defendants, except as provided in paragraph (2) of subdivision (b) of Section 1001.42, in order to reduce the stigma that is often associated with a criminal record and to increase the likelihood that a defendant will be able to obtain employment following the successful completion of diversion in lieu of sentencing, as provided in this chapter.

(d) It is the intent of the Legislature that this chapter not be construed to preempt other current or future pretrial or precomplaint diversion programs. It is also the intent of the Legislature that current or future posttrial diversion programs not be preempted, except as provided in Section 13201 or 13352.5 of the Vehicle Code.

1001.42. (a) The postplea misdemeanor diversion program established by this chapter may be offered to a defendant, alleged in an accusatory pleading to have committed a misdemeanor, at his or her first appearance or within 20 calendar days of his or her

first appearance, whichever occurs later, unless a jury has been empaneled, or except as specified in subdivision (b).

(b) Postplea misdemeanor diversion under this chapter shall not be offered when any of the following are met:

(1) When the accusatory pleading charges the commission of a misdemeanor for which any of the following apply:

(A) Incarceration would be mandatory upon conviction of the defendant.

(B) Registration would be required upon conviction pursuant to Section 290.

(C) The granting of probation is prohibited.

(D) The magistrate determines that the offense shall be prosecuted as a misdemeanor pursuant to paragraph (5) of subdivision (b) of Section 17.

(E) (i) Force or violence against a person or peace officer is charged.

(ii) The unlawful use, possession, sale, or transfer of a dangerous weapon, firearm, or ammunition is charged.

(F) The victim is a person identified in Section 6211 of the Family Code or the victim is a minor, or a dependent adult or an elder pursuant to Section 368.

(G) A violation of Section 23152 or 23153 of the Vehicle Code is charged.

(H) A violation of subdivision (c) of Section 192 or subdivision (b) of Section 191.5 is charged.

(I) A violation of Section 186.22 is charged.

(J) A violation of an environmental crime or a workplace safety crime is charged, including, but not limited to, an alleged violation of subdivision (a) of Section 5650 of the Fish and Game Code, Section 8670.64 of the Government Code, Section 25507 of the Health and Safety Code, Section 6423 or 6425 of the Labor Code, Section 387 of this code, or Section 13387 of the Water Code.

(2) The defendant has been convicted of any misdemeanor in the previous 10 years, a misdemeanor involving force or violence, or a felony.

(3) The defendant has previously been diverted pursuant to this chapter or any other provision of law.

(4) The defendant is a partnership, firm, association, corporation, limited liability company, or other legal entity.

(c) Nothing in this section is intended to preclude a defendant from being offered postplea misdemeanor diversion pursuant to this chapter when charged with a violation of Section 415.

(d) The prosecuting attorney may determine whether the defendant is eligible for postplea misdemeanor diversion. If the prosecuting attorney determines that the defendant is eligible for postplea misdemeanor diversion, the prosecuting attorney shall notify the defendant's attorney or the defendant if he or she is appearing pro per of that determination.

(e) The notification required by subdivision (d) of this section and subdivision (b) of Section 1001.44 shall include both of the following:

(1) A full description of the procedures for postplea misdemeanor diversion.

(2) A clear statement that failure to perform a term or condition of the program or to comply with a court order will result in sentencing upon the original guilty or nolo contendere plea as if diversion had not occurred.

1001.43. (a) A defendant who chooses to participate in the postplea misdemeanor diversion program under this chapter shall be required to complete each of the following in order to be deemed to have successfully completed his or her postplea misdemeanor diversion program:

(1) Enroll in and complete at least one of the following programs approved by the prosecuting attorney:

(A) Counseling.

(B) Community service.

(2) Make full restitution.

(3) Comply with any court-ordered protective order, stay-away order, or order prohibiting firearm possession for the time period that would have been imposed upon conviction of the underlying charge.

(4) Remedy any violation of any law, code, or regulation that was the basis for consideration of the accusatory pleading.

1001.44. (a) (1) If the prosecuting attorney determines that a defendant is not eligible for the postplea misdemeanor diversion program, and if the defendant has entered a guilty plea or a plea of nolo contendere, the court may, upon setting forth reasons on the record for overruling the determination of the prosecuting attorney, independently offer the defendant postplea misdemeanor

diversion pursuant to this chapter. Judicial plea bargaining is prohibited.

(2) If no official court reporter is present and no electronic recording equipment is used, the court shall have the reasons for overruling the determination of the prosecuting attorney pursuant to paragraph (1) entered in the minutes of the court.

(b) If the court determines that the defendant is eligible for postplea misdemeanor diversion, the prosecuting attorney shall notify the defendant's attorney or the defendant if he or she is appearing pro per of that determination.

(c) Postplea misdemeanor diversion offered by the court under this section shall conform to the requirements of Section 1001.42.

(d) A court's order granting postplea misdemeanor diversion under this section shall be appealable pursuant to paragraph (2), (6), or (7) of subdivision (a) of Section 1466.

1001.45. (a) If a defendant owes restitution, the postplea misdemeanor diversion program to which the defendant is referred pursuant to this chapter shall establish procedures for the collection and distribution of restitution to the victim or victims, and provide proof of payment to the court.

(b) The procedures established pursuant to this section shall include a provision that allows the administrator of the postplea misdemeanor diversion program to, if the administrator determines there to be good cause, request an extension whereby the defendant would be granted additional time to repay the amount of restitution ordered by the court.

1001.46. (a) In any case in which a defendant has fulfilled the conditions of his or her postplea misdemeanor diversion pursuant to this chapter, if the defendant is not serving a sentence for an offense, is not on probation for an offense, and is not charged with the commission of an offense, the court shall, pursuant to Section 1001.485, strike the defendant's plea of guilty or nolo contendere and dismiss the action against the defendant. The defendant, except as noted below, shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she was granted postplea misdemeanor diversion, except as provided in Section 13555 of the Vehicle Code. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense and a record pertaining to an arrest resulting in a successful

completion of a postplea misdemeanor diversion program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate except as specified in subdivision (c). However, in any subsequent prosecution of the defendant for another offense, the prior conviction may be pleaded and proved and shall have the same effect as if postplea misdemeanor diversion had not been granted or the accusation dismissed.

(b) Upon the dismissal of the defendant's accusations, the arrest upon which the case was diverted shall be deemed to have never occurred. The defendant shall be informed of his or her right, if any, to petition for a certificate of rehabilitation and pardon.

(c) (1) The defendant shall be informed that the dismissal does not relieve him or her of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, for licensure by a state or local agency, or for contracting with the California State Lottery Commission.

(2) Dismissal of an accusation pursuant to this section does not permit a person to own, possess, or have in his or her custody or control a firearm, or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation underlying a conviction pursuant to this section does not permit a person to hold public office if a conviction for that offense would otherwise prohibit the holding of that public office.

(4) The defendant shall be advised that, regardless of his or her successful completion of a postplea misdemeanor diversion program, the arrest upon which the case was diverted may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830, or for a criminal justice agency, as defined in Section 13101.

1001.47. Nothing in this chapter is intended to limit the rights of a victim under Section 28 of Article I of the California Constitution.

1001.48. (a) A postplea diversion program in existence as of the effective date of this chapter shall be exempt from compliance with the provisions of this chapter.

(b) Notwithstanding subdivision (a), the superior court of the county in which the underlying offense occurred may offer the defendant postplea misdemeanor diversion pursuant to this chapter. If the defendant is diverted pursuant to this chapter, the program shall comply with the provisions of this chapter.

1001.485. The judge or magistrate shall, upon his or her motion or upon the petition of the prosecuting attorney, and in the furtherance of justice, order an action to be dismissed if the defendant has fulfilled the conditions of his or her postplea misdemeanor diversion pursuant to this chapter.

1001.49. This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2013

Governor